



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
(Attorney Docket No. AHP-98249)

In re Patent Application of:)
)
FRANS GARRIT DAVELAAR)
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Filed: November 13, 2001)
)
For: METHODS AND VACCINES FOR PROVIDING)
IN OVO PROTECTION AGAINST TURKEY)
RHINOTRACHEITIS)

Appln. No.: 10/054,288
Confirmation No.: 5326
Customer No.: 25291
Group Art Unit: 1648
Examiner: Shanon A. Foley

Paper No.: 16

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO A FINAL REJECTION

Dear Sir:

Responsive to the Office Action mailed May 16, 2005 in the above-referenced application, please consider Applicant's comments in a favorable light.

REMARKS

Reconsideration of this application is respectfully requested.

The Examiner sustained the rejection of Claims 1, 3-15 and 17-21 under 35 U.S.C. § 102 (b); the rejection of Claim 16 under 35 U.S.C. §§ 102 (b)/103(a); and the rejection of Claims 2 and 22 under 35 U.S.C. § 103(a) for reasons of record.

Based on the Examiner's rationale for not allowing this case in view of Applicant's amendment and arguments of record, it is clear that the issue of patentability rests on whether the transitional phrase "consisting essentially of" can define the scope of the claimed invention to exclude the interferon of Poston *et al.* Applicant submits that the facts establish that "consisting essentially of" is not equivalent to "comprising" under the circumstances of this case and, thus, the "consisting essentially of" claims sufficiently distinguish the claimed invention from the art.

The guidelines under M.P.E.P. § 2111.03 suggest that the Office may apply prior art under 35 U.S.C. §§ 102 and 103, and construe "consisting essentially of" the same as "comprising" in the absence of a clear indication in the specification or claims of what the basic and novel characteristics of the invention actually are. The recommendation is grounded on certain case law

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